

DOCUMENT RESUME

03253 - [A2173209]

[Refusal of Agency to Consider a Bid Price Modification].  
B-188883. August 2, 1977. 4 pp.

Decision re: Webfoot Reforestation; by Robert F. Keller, Deputy  
Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel: Procurement Law II.  
Budget Function: General Government: Other General Government  
(806).

Organization Concerned: Forest Service.

Authority: F.P.R. 1-2.303-5. 40 Comp. Gen. 261. 40 Comp. Gen.  
265. 50 Comp. Gen. 76. B-186794 (1976). B-183718 (1975).  
B-181563 (1974).

The Forest Service requested a decision regarding a claim for a higher contract price than that contained in the offeror's bid. The contractor's acceptance of the contract price for work performed, while clearly indicating that they did not regard the amount as full payment and disputing the decision of the contracting officer to disallow a late bid modification, did not operate as accord and satisfaction. A telegraphic bid modification, received by telephone 29 minutes after the bid opening, may not be considered since there was no evidence of mishandling by the Government. (Author/SC)

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**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548**

**FILE: B-188883**

**DATE: August 1, 1977**

**MATTER OF: Webfoot Reforestation**

**DIGEST:**

1. Contractor's acceptance of contract price for work performed, while clearly indicating it does not regard the amount as full payment and disputing decision of contracting officer to disallow late bid modification, does not operate as accord and satisfaction.
2. Telegraphic bid modification, received by telephone 29 minutes after exact time of bid opening, may not be considered. Contractor's failure to advise Western Union to deliver modification to room where bids were being opened, combined with telegraph company's failure to reach procurement officials earlier by telephone, substantially caused lateness, and there is no evidence of mishandling by Government.

The Forest Service, United States Department of Agriculture, has requested our decision regarding a claim by Webfoot Reforestation (Webfoot). The Forest Service refused to consider a modification increasing Webfoot's bid price for hand tree planting in the Olympic National Forest by \$7 an acre because it was received by telephone from Western Union 29 minutes after the exact time of bid opening.

The IFB in this case, No. R6-9-77-18, was issued February 28, 1977, with bid opening at 2 p.m. on March 28, 1977. Webfoot states that it was unable to provide a street address for delivery of its telegraphic modification, submitted to Western Union at about 9 a.m. on the 28th, because, according to the IFB, offers were to be addressed to:

"U.S. Department of Agriculture  
Olympic National Forest  
P.O. Box 2288  
Olympia, WA 98507."

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Webfoot therefore instructed Western Union to telephone the modification. According to Webfoot, Western Union received busy signals when it attempted to call the Forest Service at 10:35 and 11:21 a.m., and received no answer at 1:05 p.m. The Forest Service indicates that its first notice of Webfoot's modification was received at 2:29 p.m., while the contracting officer was tabulating bids. The contracting officer informed the operator, and subsequently informed Webfoot, that this was too late for consideration.

Webfoot made no attempt to withdraw or claim a mistake in its original bid price of \$16,758. Even if the modification, increasing its price by \$1,911, had been timely, the Forest Service states that Webfoot would have been the only bidder eligible for item I of the contract. (Each bidder had qualified its bid to accept only one of four items on the schedule.) Because of the short growing season, Webfoot was awarded this portion of the contract on April 7, 1977, and has since "diligently and satisfactorily" performed. Webfoot has accepted \$16,758, reserving the right to claim the additional amount.

The Forest Service forwarded the matter to our Office. In support of its decision to treat the telephone call from Western Union as a late modification, the Forest Service cites the contract clause and Federal Procurement Regulations (FPR) § 1-2.304 and 1-2.305 (1964 ed.) regarding late bids. The Forest Service points out that in addition to listing a post office box, the IFB stated that hand carried bids would be received and opened in room 306 of the Federal Building, Olympia, Washington; that Western Union had delivered another modification for the same solicitation to that office; and that two or three persons were on duty at the times Western Union reportedly attempted to call.

We note that although Webfoot has accepted \$16,758 for the work performed, this does not operate as an accord and satisfaction. Webfoot has clearly indicated that it does not regard the amount as full payment, but rather disputes the decision of the contracting officer to not accept its bid modification, and the Forest Service has requested our decision. See generally 40 Comp. Gen. 261, 265 (1960).

The issue therefore is whether Webfoot's bid modification was properly rejected as late. For the following reasons, we believe that it was. The IFB included the following clause:

"8. LATE BIDS, MODIFICATIONS OF BIDS, OR  
WITHDRAWAL OF BIDS

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and either:

(1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier); or

(2) It was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in (a), above.  
\* \* \*

FPR § 1-2.304 and 1-2.305, SUPRA, provide in pertinent part:

"§ 1-2.304 Modification or withdrawal of bids.

(a) Bids may be modified or withdrawn by written or telegraphic notice received in the office designated in the invitation for bids not later than the exact time set for opening of bids. A telegraphic modification or withdrawal of a bid received in such office by telephone from the receiving telegraph office not later than the time set for opening of bids shall be considered if such message is confirmed by the telegraph company by sending a copy of the written telegram which formed the basis for the telephone call.  
\* \* \*

"§ 1-2.305 Late modifications and withdrawals.

Modifications of bids and requests for withdrawal of bids which are received in the office designated in the invitation for bids after the

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exact time set for opening are 'late modifications' and 'late withdrawals,' respectively. A late modification or late withdrawal shall be subject to the rules and procedures applicable to late bids set forth in § 1-2.303. \* \* \*

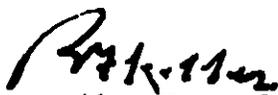
FPR § 1-2.303-4 further provides:

"§ 1-2.303-4 Telegraphic bids.

A late telegraphic bid received before award shall not be considered for award, regardless of the cause of the late receipt, including delays caused by the telegraph company, except for delays due to mishandling on the part of the Government in its transmittal to the office designated in the invitation for bids for the receipt of bids, as provided for bids submitted by mail (see § 1-2.303-3)." (Emphasis added.)

We believe that Webfoot's apparently inadvertent failure to realize and advise Western Union that the modification could be delivered to the room where bids were to be opened, combined with Western Union's failure to reach the Forest Service by telephone before the 2 p.m. opening time, substantially caused the lateness of the bid. There is no evidence of mishandling by the Government, either during or after receipt of the modification. In this regard, see 50 Comp. Gen. 76 (1970), in which employees of a Western Union office at an Air Force base exchange made three unsuccessful attempts to notify procurement officials by telephone of a bid modification. We attributed the delay in that case to the telegraph company and held that the late modification was not for consideration. See also S & Q Corporation, B-186794, November 11, 1976, 76-2 CPD 402; Dynamic International, Inc., B-183718, July 28, 1975, 75-2 CPD 61; Moore & Hanks Company, B-181563, September 10, 1974, 74-2 CPD 156.

Accordingly, the claim is denied.

  
Deputy Comptroller General  
of the United States